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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK SHIN,

Plaintiff,

v.

ICON FOUNDATION,

Defendant.

AND RELATED COUNTERCLAIM

Case No. 3:20-CV-07363 (WHO)

**DEFENDANT/COUNTERCLAIMANT
ICON FOUNDATION'S NOTICE OF
(1) MOTION AND MOTION FOR
ATTORNEY'S FEES AND COSTS; (2)
REQUEST FOR LEAVE TO FILE
MOTION FOR PARTIAL
RECONSIDERATION OF ORDER ON
REMEDIES; AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Hearing date: February 26, 2025

Time: 2:00 pm

Judge: Hon. William H. Orrick

Courtroom: 2, 17th Floor

Complaint filed: October 20, 2020

TO ALL PARTIES AND TO THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 26, 2025, at 2:00 pm, before the Honorable William H. Orrick of the United States District Court for the Northern District of California, Defendant and Counterclaimant, ICON Foundation (“ICON”), will and hereby does move this Court for an order awarding ICON its attorney’s fees and costs pursuant to the common fund and substantial benefit doctrines in an amount equal to the greater of (1) 30% of the value of the cryptocurrency assets it recovered in this matter, which value shall be determined upon their liquidation by the Receiver; or (2) \$3,471,594 representing ICON’s fees and costs using the lodestar approach. If the recovered assets were liquidated for their current value, they would generate approximately \$16.091 million in proceeds, which on a 30%-percentage-of-the-fund basis would translate to an award of \$4,827,154. Such an award is appropriate based on the effort and expense ICON incurred to recover the cryptocurrency at issue and to secure the precedent-setting rulings in this matter for the benefit all ICX holders.

ICON also seeks leave to file a motion for reconsideration of that portion of the Court’s Order on Remedies (ECF No. 211) in which the Court declined to require conversion of the non-ICX crypto-assets held by the Receiver back into their original ICX form prior to destruction. ICON respectfully submits that, in order to undo the price-reducing effect caused by Shin’s and his transferees’ sales of more than 5.3 million of bug-generated ICX for other cryptocurrencies, it is critical that such assets be ordered exchanged back into their original ICX form prior to destruction. Absent such an order, a significant aspect of the harm caused by Shin’s exploit will go unremedied.

This motion is made pursuant to Federal Rule of Civil Procedure 54, Civil L.R. 7-9 and 54-5, this Court’s Orders on Summary Judgment (ECF No. 202) and Remedies (ECF No. 211); the Supreme Court’s decision in *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); the other caselaw cited herein; and is based upon this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the Declarations of Christopher L. Wanger, Jason Gottlieb and Min Kim; all pleadings and papers on file in these actions; and upon such other matters as may be presented to the Court at or before the time of hearing.

1 Dated: January 22, 2025

MANATT, PHELPS & PHILLIPS, LLP

2 By: /s/ Christopher L. Wanger

3 Christopher L. Wanger

Misa K. Eiritz

4 Jason Gottlieb *Admitted pro hac vice*

5 Michael Mix *Admitted pro hac vice*

MORRISON COHEN, LLP

6 *Attorneys for Defendant and Counterclaimant, ICON*
7 *Foundation*

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I. INTRODUCTION

This case arose from Mark Shin's discovery of a bug in the software that runs the ICON Network, a decentralized cryptocurrency network. Rather than simply do the right thing and alert Network users of the malfunction, Shin sought to capitalize on his discovery. Over the course of an 11-hour attack on the Network, Shin exploited the bug 557 times and, in the process, caused the Network to deliver to him almost 14 million bug-generated ICX cryptocurrency tokens. Shin's exploit increased the total supply of ICX by 2.5% and posed an existential threat to the Network and risked harm to the value of ICX tokens held by thousands of people.

Shin did everything he could to benefit from his exploit and, in the process, inflicted additional harm on ICX holders. Specifically, on the same day of his exploit, Shin sold millions of the bug-generated ICX for other cryptocurrencies and transferred millions more to his friends and family who also sold the bug-generated ICX for other cryptocurrencies. In total, Shin and his transferees sold more than 5.3 million bug-generated ICX. In the wake of this massive sell-off, the price of ICX plummeted.

Shin and his transferees apparently expected that no one would attempt to remedy their actions because of the difficulties in doing so, including difficulties caused by the legal uncertainty surrounding the ownership of erroneously generated cryptocurrency, the decentralized nature of the ICON Network and the anonymity of Network users. Against this backdrop, ICON, the party that founded the Network, stepped in and assumed responsibility for preventing Shin from profiting from his misdeeds and redressing the harm he caused. ICON retained experienced counsel, reported Shin through counsel to law enforcement, cooperated with the FBI in its seizure of most of the bug-generated ICX and crypto assets traced thereto, cooperated with prosecutors in a parallel criminal proceeding against Shin and successfully secured the majority of assets traceable to Shin's exploit in this and a related Colorado action. Ultimately, ICON prevailed in this action on unjust enrichment claims against Shin on behalf of all ICX holders and secured the return of the majority of the bug-generated ICX and other assets that Shin and his transferees acquired with them. As a result of ICON's substantial effort and expenditures, the Receiver in this action is holding crypto assets traced to Shin's exploit worth more than \$16 million.

1 In addition to this sizeable monetary recovery, ICON also secured an important precedent
 2 for the cryptocurrency industry. Through this action, ICON obtained judicial confirmation that,
 3 notwithstanding its new and novel nature, the world of digital finance is not the wild west, computer
 4 code is not law, and basic legal and equitable principles apply to cryptocurrency and the
 5 decentralized networks on which they reside. This action confirmed that representatives of
 6 decentralized networks can pursue and obtain recovery from network exploiters. In short, ICON
 7 enforced an important right affecting the public interest by securing a judicial pronouncement that
 8 the exploitation of crypto networks can be remedied by the courts.

9 Because the recovery and rulings in this matter benefitted all ICX holders and the
 10 cryptocurrency industry generally and because ICON alone was responsible for securing the
 11 recovery and rulings, it should receive an award of attorney's fees and costs from the funds it
 12 recovered. ICON requests an award equal to the greater of (1) 30% of the value of all Seized Assets
 13 transferred by the FBI to the Receiver upon their liquidation by the Receiver¹ (which, based on
 14 recent valuations, would be an award of \$4,827,154); or (2) \$3,471,594 under the lodestar approach.

15 Also, to ensure that all harm caused by Shin and his transferees is remedied, including the
 16 price-reducing effect of their sales of 5.3 million bug-generated ICX, the Court should grant ICON
 17 leave to seek partial reconsideration of the Court's Order on Remedies (ECF No. 211) to require
 18 the Receiver to convert (*i.e.*, sell) all of the non-ICX cryptocurrencies in her possession back into
 19 their original ICX form prior to destruction. ICON respectfully submits such leave is necessary to
 20 ensure that all harm suffered by ICX holders from Shin's exploit is remedied.²

21
 22
 23
 24 ¹ Because the Seized Assets are comprised of highly volatile cryptocurrencies, their value can
 25 fluctuate substantially. For example, since the Presidential election in November 2024, the value
 26 of the Seized Assets has increased by more than \$2 million. To protect against a potential material
 decline in value of the Seized Assets between now and the time of their liquidation, ICON
 alternatively seeks an award of not less than the lodestar amount of its fees and costs.

27 ² As required by Civil L.R. 54-4(b)(1), ICON's counsel met and conferred with Shin's counsel
 28 without success to attempt resolve disputes about this motion. See accompanying Declaration of
 Christopher Wanger ("Wanger Decl."), ¶ 32.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. ICON Reports Shins' Exploit to the FBI and Assists in the Seizure of Bug-Generated ICX and Assets Traced Thereto.

The factual background in this matter is more fully set out in ICON's Motion for Summary Judgment. (ECF No. 172.) In short, since Shin waged his attack on the ICON Network on August 22, 2020, ICON has taken the lead on behalf of all ICX holders to limit the harm caused by Shin's exploit and to remedy its effects. ICON initially attempted to persuade Shin to voluntarily return the approximately 14 million ICX tokens he received through his exploit by offering payment of a \$200,000 bug bounty to Shin in exchange for his return of the bug-generated tokens. (*See* Kim Decl. (ECF No. 174) at ¶ 88.) After Shin declined that offer and confirmed he had no intention of returning the bug-generated ICX, ICON reported Shin's exploit to federal authorities through counsel and subsequently cooperated with their investigation of Shin. (*Id.* at ¶ 89.)

The FBI used information provided by ICON, including the addresses of the wallets Shin used in his exploit, to execute a dozen seizure warrants on several cryptocurrency exchanges where Shin and his transferees were secreting their ill-gotten gains. As a result of ICON's assistance, between December 1, 2020 and April 15, 2021, the FBI seized bug-generated ICX traceable to Shin's exploit and other assets that Shin and his transferees purchased with the bug-generated ICX (the "Seized Assets"). (*See* Wall Affidavit (ECF No.173-6) at ¶¶ 1-11 and 25-27; Shin's Interrogatory Response No. 1 (ECF No. 173-5) at pp 4:11-7:17; and Shin Depo Tr. (ECF No. 173-1) at p. 250:1-251:6.) No one has ever successfully disputed that all of the Seized Assets consist of either (1) bug-generated ICX from Shin's exploit; or (2) other crypto assets purchased by Shin and his transferees with bug-generated ICX traced to Shin's exploit.³ The Seized Assets are currently worth more than \$16 million as set forth more fully below. Due in principal part to ICON's litigation activities, the FBI has transferred the Seized Assets to the Receiver appointed at ICON's request and preserved them for the benefit of ICX holders.

³ In the more than three years since the FBI's seizure of assets it traced to Shin's exploit, neither Shin nor his transferees produced any evidence in this or the Colorado forfeiture action (discussed below) that the Seized Assets consist of anything other than assets traced to Shin's exploit.

At all times after Shin's exploit, ICON asserted both that the bug-generated ICX Shin received and the assets that he and his transferees acquired therewith were not their property and that Shin and his transferees had been unjustly enriched by Shin's exploit. ICON did so at considerable risk to itself as evidenced both by the claims asserted by Shin against ICON in this action and the future malicious prosecution claim Shin has stated he intends to bring against ICON discussed below. Ultimately, in order to undo the harm Shin caused, ICON sought and obtained a judgment in this action vindicating its principled stand. For his part, Shin retained fifteen lawyers at five different law firms who contended in this and related proceedings in Colorado that Shin owned the bug-generated ICX and assets traced thereto.⁴ As a result, ICON was forced to incur substantial effort and expense to secure the return of Shin's ill-gotten gains.

Shin filed multiple complaints in which he asserted novel claims against ICON, including claims for defamation, *prima facie* tort, punitive damages and declaratory relief. As a result, ICON was required to file three separate motions to dismiss and an anti-SLAPP motion in order to dispose of Shin's claims as early as possible. ICON also prepared and filed a detailed 25-page cross-complaint asserting claims for unjust enrichment and seeking to recover all proceeds from Shin's exploit for the benefit of ICX holders at the time of Shin's exploit. (*See* ICON's First Amended Counterclaim (ECF No. 100) at ¶ 5 and pp. 24-25.) Ultimately, this case implicated two important public rights: the public interest in ensuring that property is obtained through legitimate means⁵ and preventing crypto exploiters, like Shin and his transferees, from taking advantage of their own wrongs.

ICON engaged in substantial discovery, including serving multiple sets of interrogatories and document requests to advance the claims of ICX holders. (Wanger Decl., ¶¶ 9, 23(a)-(p).) ICON

⁴In this action, Shin has been represented by the firms of Freedman Norman Friedland LLP (attorneys Kyle Roche, Daniel Stone, Edward Norman, Peter Bach-y-Rita, Katherine Ann Eskovitz and Ivy T. Ngo), Morrison & Foerster LLP (attorneys Michael Burshteyn and Joseph Alexander Lawrence), The Crypto Lawyers (attorney Rafael Yakobi) and Turner & Associates, P.A. (attorneys Clyde Turner, Emilio Cazares and Cassie Halloway). In the Colorado actions, Shin was represented by Haddon, Morgan and Foreman, P.C. (attorneys Jeff Pagliuca, Dru Nielsen, and Kelly Kathleen Schulten).

⁵ See Order (ECF No. 202) at p. 8:27-8 (*citing Kremen v. Cohen*, 337 F.3d 1024, 2030 (9th Cir. 2003)).

1 responded to Shin’s discovery requests, including interrogatories, requests for admission and
 2 document requests. (*Id.* at ¶ 9) ICON took the depositions of four lay witnesses and defended
 3 depositions of itself and Min Kim. (*Id.*) ICON also engaged in, and responded to, substantial expert
 4 discovery. ICON retained three experts all of whom issued Rule 26 reports, including (1) a property
 5 law expert who specializes in digital assets and cryptocurrency; (2) a technical expert who
 6 specializes in the operations of blockchain networks and the customs practices in the
 7 cryptocurrency industry; and (3) an economist who specializes in the economics of
 8 cryptocurrencies. (*Id.* at ¶ 10.) Two of ICON’s experts issued rebuttal reports in response to reports
 9 issued by experts retained by Shin. ICON deposed both of Shin’s experts. (*Id.*)

10 ICON also made every effort to resolve the case without judicial intervention, including by
 11 participating in two separate private mediations with Shin, the first in January 2022 and a second
 12 in November 2023. (*Id.* at ¶ 14.) Shin rejected numerous good faith settlement offers from ICON.
 13 (*Id.*)

14 ICON’s efforts were not limited to this action but extended to parallel criminal and asset
 15 forfeiture proceedings in Colorado. (*Id.* at ¶ 15.) In response to the reports of Shin’s exploit to law
 16 enforcement, the District Attorney for Arapahoe County, Colorado⁶ (the “DA”) elected to prosecute
 17 Shin on three separate counts, including cybercrime for theft over \$1 million, theft for over \$1
 18 million and money laundering in the District Court, Arapahoe County, Colorado (Case No.
 19 2021CR1445) (the “Colorado Criminal Action”). The DA also initiated an asset forfeiture action
 20 relating to the Seized Assets in the same court (Case No. 2021CV031394) (the “Colorado Asset
 21 Forfeiture Action”). In February 2022, the parties stipulated to an order staying this action pending
 22 resolution of the Colorado Criminal Action. (*See* Order at ECF No. 106.)

23 **B. ICON Obtains the Appointment of a Receiver to Oversee the Seized Assets**
 24 **and to Prevent Their Dissipation by Shin.**

25 In the interim, to ensure that the Seized Assets were not returned to Shin or his transferees
 26 or otherwise dissipated, including in the event that the criminal prosecution of Shin was
 27

28 ⁶ Shin resides in Aurora, Colorado, which is within Arapahoe County.

1 unsuccessful, ICON obtained over Shin’s repeated oppositions an order appointing a receiver to
 2 take possession of the Seized Assets from the FBI. (*See* Order appointing Receiver (ECF No. 129).)
 3 In that order, this Court concluded that “[t]he interests that the ICON Foundation seeks to protect
 4 will also be well-served by appointing a receiver, which would ensure that the seized assets cannot
 5 be concealed or otherwise moved as this case is decided.” (*Id.* at p. 6:18–20.) The Court entered a
 6 subsequent Modified Order on July 18, 2023, providing that, should the Seized Assets ever be
 7 released by the Colorado Court, they must be released to the Receiver and prohibiting Shin and his
 8 attorneys from interfering with the Receiver’s custody of the Assets. (ECF No. 130.) Shin
 9 repeatedly sought to vacate the Receiver’s appointment. (*See e.g.*, Order declining to reconsider
 10 appointment (ECF No. 160) at p. 2.)

11 The Colorado Criminal Action was tried in May 2023. Min Kim of ICON testified in the
 12 trial along with others who supported ICON and had detailed knowledge of the Network. (*See*
 13 accompanying Declaration of Min Kim (“Kim Decl.”), ¶ 10.) Shin’s lawyers persuaded the judge
 14 to exclude substantial testimony regarding cryptocurrency generally and specifically the operation
 15 of the ICON Network on the grounds that (1) it called for expert testimony; and (2) the State had
 16 failed to qualify its intended witnesses, including Mr. Kim and others, as experts on the subjects.
 17 (Wanger Decl., ¶ 17; Kim Decl., ¶ 11.) As a result, the jury failed to hear: (1) how the Network is
 18 governed and operates on a technical level; (2) how and why the Network generates and delivers
 19 new ICX to users solely as a reward for staking; and (3) other key evidence establishing that the
 20 bug-generated ICX was not Shin’s property. In the process, the DA was precluded from presenting
 21 evidence relevant to the elements of the charged crimes. (Wanger Decl., ¶ 17; Kim Decl., ¶ 11.)

22 In the face of an incomplete evidentiary record, the jury ultimately hung on all three counts.
 23 The DA notified the Colorado Court of its intent to retry Shin. (Wanger Decl., ¶ 18.) Shin’s criminal
 24 counsel and the DA subsequently engaged in settlement discussions and reached a tentative
 25 agreement, subject to ICON’s approval, to resolve the claims. Because ICON believed the
 26 settlement failed to adequately remedy the harm to ICX holders and rewarded Shin for his exploit,
 27 ICON declined to support the settlement. (Wanger Decl., ¶ 19; Kim Decl., ¶ 12.) In the absence of
 28

1 ICON's support, the DA declined to move forward with the settlement. Instead, the DA elected to
 2 dismiss the Colorado Criminal Action to allow ICON to pursue its claims in this action and for this
 3 Court to resolve the appropriate disposition of the Seized Assets. (Wanger Decl., ¶ 19.)

4 C. **ICON Secures Summary Judgment and Legal Confirmation that the Bug-**
 5 **Generated ICX Are Not Shin's Property.**

6 After the Colorado Criminal Action was dismissed, Shin's Colorado counsel filed a motion
 7 in the Colorado Asset Forfeiture Action to enforce a \$250,000 attorney's fee lien against Shin and
 8 to have the lien satisfied from the Seized Assets, which motion Shin supported. (*Id.* at ¶ 20.) Shin's
 9 lawyers contended that the Seized Assets were Shin's property. That motion violated this Court's
 10 order which expressly prohibited Shin and his counsel from interfering with the Receiver's custody
 11 or receipt of the Seized Assets. (*See* ECF No. 133 at ¶ 6.) To prevent the wrongful dissipation of
 12 the Seized Assets, ICON was required to (1) retain local counsel in Colorado; and (2) file a motion
 13 seeking leave to intervene in the Colorado Asset Forfeiture Action and provide the Colorado Court
 14 with copies of this Court's receivership orders; and (3) oppose any distribution from the Seized
 15 Assets to Shin's lawyers. (Wanger Decl., ¶ 21.) After reviewing ICON's intervention request, the
 16 Colorado Court declined to award Shin's attorney's any fees from the Seized Assets and dismissed
 17 the Colorado Asset Forfeiture Action. As a result, ICON was able to prevent the dissipation of at
 18 least \$250,000 of the Seized Assets and a potential precedential ruling that the Seized Assets were
 19 Shin's property. (*Id.*)

20 Despite Shin's multiple attempts to prevent it, ICON ultimately secured the transfer of all
 21 of the Seized Assets by the FBI to the Receiver on June 24, 2024. Below is a chart reflecting the
 22 Seized Assets held by the Receiver and their approximate value as of January 22, 2024.⁷

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24 ///

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27 _____
 28 ⁷ As noted above, the prices of these cryptocurrency assets are highly volatile and subject to material
 changes.

Assets Traced to the Bug-Generated ICX That Were Seized By The FBI from Shin and His Transferees and Are Now Held by the Trustee

Asset	Amount	Exchange Rate to U.S. Dollar as of 1/22/25 (approximately 2:00 pm PST) (coinmarketcap.com)	Value in U.S. Dollars
ADA (Cardano)	105,859.78	\$0.99	\$104,800.41
BNB	179.8858771	\$698	\$125,559.73
BTC (Bitcoin)	47.74845944	\$104,078	\$4,969,557.98
ETH (Ethereum)	2,693.38712855	\$3,257	\$8,772,361.46
ICX	1,890,353.88	\$0.17	\$321,360.16
LINK (Chainlink)	4,153.39	\$25.46	\$105,745.31
REN	100,000.00	\$0.028	\$2,800
REP (Augur)	12.91203132	\$0.57	\$7.36
USD (\$)	256,061.29	\$1.0	\$256,061.29
USDT (Tether)	138,495.94967	\$1.0	\$138,495.95
XRP	120,726.75	\$3.17	\$382,703.80
XTZ (Tezos)	4,805.152127	\$1.18	\$5,670.08
LTO (LTO Network)	48,994.34	\$0.11	\$5,389.38
		Total	\$16,090,512

(Wanger Decl. at ¶ 22.)

While ICON’s counsel was securing the Seized Assets in this matter, Shin was unsuccessfully seeking to extend the case schedule and prolong this long-running case. (*See e.g.*, Order (ECF No. 160) at pp. 3-4.) Ultimately, based on ICON’s extensive work up of the case, ICON was able to resolve the matter efficiently by prevailing on a well-supported summary judgment motion and defeating Shin’s cross-motion. The court ruled that Shin did not obtain the bug-generated ICX via legitimate means. (*See* Summary Judgment Order (ECF No. 202) at pp. 1:12-24 and 9:1-6.) Instead, Shin obtained those tokens through his willful exploit of a known flaw in the Network. The Court concluded that because he did not obtain the bug-generated ICX by legitimate means, those tokens are not his property. (*Id.*) The Court concluded that Shin had been unjustly enriched because “he exploited, received, and knowingly retained a benefit that was conferred to him via his willful decision to manipulate what he understood to be a flaw in the Network.” (*Id.* at p. 18:3-6.) Under the circumstances, “It would be inequitable to allow him to retain any benefit from that conduct.” (*Id.* at p. 18:11-12.) In its subsequent Order on Remedies, the Court held that ICON could seek an award of fees and costs from the Seized Assets and that the balance of the

1 Seized Assets should be destroyed. (Order (ECF No. 211) at pp. 4-5.)

2 III. LEGAL ARGUMENT

3 A. ICON is Entitled to An Award of Attorney's Fees and Costs From the Seized 4 Assets Under the Common Fund / Substantial Benefit Doctrine.

5 Under the exercise of its equitable power, a federal court may award attorney's fees to
6 successful litigants who confer a common benefit upon a class of individuals not participating in
7 the litigation (the so-called "Common Fund" or "Substantial Benefit" doctrine). *Boeing Co. v. Van*
8 *Gemert*, 444 U.S. 472, 478-479 (1980); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003);
9 *Fischel v. Equitable Life Assurance Soc'y of the U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002). The
10 doctrine is an exception to the American Rule that litigants bear their own attorney's fees. "[A]
11 litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or
12 his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing*, 444 U.S. at
13 478. This exception works to prevent "persons who obtain the benefit of a lawsuit without
14 contributing to its cost [from being] unjustly enriched at the successful litigant's expense . . . by
15 assessing attorney's fees against the entire fund, [and] thus spreading fees proportionately among
16 those benefited by the suit." *Id.*

17 "The form of suit is not a deciding factor; rather, the question to be determined is whether
18 a plaintiff, in bringing a suit either individually or representatively, has conferred a benefit on
19 others." *Reiser v. Del Monte Props. Co.*, 605 F.2d 1135, 1140 (9th Cir. 1979). An award of fees
20 under the common fund doctrine is appropriate where, among other things, "(1) the class of
21 beneficiaries [was] sufficiently identifiable, (2) the benefits can be accurately traced, and (3) the
22 fee can be shifted with some exactitude to those benefiting." *Indep. Living Ctr. of S. California,*
23 *Inc. v. Kent*, 909 F.3d 272, 285 (9th Cir. 2018) (quoting *In re Hill*, 775 F.2d 1037, 1041 (9th Cir.
24 1985). A monetary recovery is not a prerequisite under the doctrine. A fee award may be
25 appropriate where the litigation confers a "substantial nonpecuniary benefit" on the members of an
26 ascertainable class through injunctive or declaratory relief and the court's jurisdiction over the
27 subject matter of the suit makes possible an award that will operate to spread the costs
28

1 proportionately among them. *See Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 393 (1970). The court
 2 has broad discretion in awarding fees and may award fees for work done on related issues that were
 3 never litigated but assisted counsel in obtaining the result. *Wininger v. SI Mgmt. L.P.* 301 F.3d
 4 1115, 1120-1121 (9th Cir. 2002).

5 Reasonable litigation costs also are recoverable under a common fund theory of recovery.
 6 *See, e.g., Carlin v. DairyAmerica, Inc.*, 380 F.Supp.3d 998, 1023-24 (E.D. Cal. 2019) (“An attorney
 7 who has created a common fund for the benefit of the class is entitled to reimbursement of
 8 reasonable litigation costs from that fund. The award “should be limited to typical out-of-pocket
 9 expenses that are charged to a fee-paying client and should be reasonable and necessary” and “can
 10 include reimbursements for: (1) meals, hotels, and transportation; (2) photocopies; (3) postage,
 11 telephone, and fax; (4) filing fees; (5) messenger and overnight delivery; (6) online legal research;
 12 (7) class action notices; (8) experts, consultants, and investigators; and (9) mediation fees. The
 13 standard of reasonableness of costs is to be given a liberal interpretation.”) (collecting Ninth Circuit
 14 authority).

15 Here, each element for an award of fees and costs under the common fund theory is met.
 16 First, ICON’s suit conferred a benefit on the holders of ICX specifically and more generally on all
 17 holders of cryptocurrency. ICON recovered from Shin and his transferees more than \$16 million in
 18 bug-generated ICX and other cryptocurrency traceable to Shin’s exploit that did not belong to them.
 19 As a result, ICON was able to remedy much of the harm suffered by holders of ICX from Shin’s
 20 exploit. In addition to the sizeable monetary recovery obtained by ICON for ICX holders, ICON
 21 also secured an important precedent for ICX and other cryptocurrency holders. The judgment in
 22 this action will confirm for the world that cryptocurrency exploits can be remedied by the courts,
 23 the effect of which should be to instill greater trust in the ICON Network and other cryptocurrency
 24 networks generally.

25 The beneficiaries of this action are sufficiently identifiable. All persons who owned ICX at
 26 the time of Shin’s exploit and who retain those tokens today benefitted from the judgment in this
 27 action. Shin’s exploit increased the existing ICX supply by 2.5% and the price of ICX fell
 28

1 significantly in the wake of the exploit. The Court’s judgment in this action remedies much of that
 2 harm. On August 22, 2020 (the date of Shin’s exploit), there were approximately 42,507 unique
 3 wallets that held at least 0.1 ICX. (Kim Decl., ¶ 16.) Assuming, each wallet was held by a different
 4 person, then that same number of people were affected by Shin’s exploit.

5 The benefits of ICON’s suit, both pecuniary and non-pecuniary, can be accurately traced.
 6 There is no dispute that the FBI traced all of the Seized Assets to Shin’s exploit – the Seized Assets
 7 consist entirely of bug-generated ICX or assets that Shin or his transferees acquired with the bug-
 8 generated ICX. The value of those assets currently exceeds \$16 million. And while those assets
 9 will not be returned directly to ICX holders and instead will largely be destroyed, such destruction
 10 provides a direct benefit to ICX holders because it undoes the harm of Shin’s exploit and restores
 11 trust in the Network.⁸

12 Finally, the fee award can be shifted to beneficiaries with exactitude. The fee award will be
 13 deducted before the destruction of the Seized Assets, resulting in each beneficiary simultaneously
 14 bearing both a proportional share of the total fee and a proportional benefit.

15 **B. An Award of Fees In An Amount Equal To 30% of the Seized Assets Is**
 16 **Appropriate.**

17 District courts presiding over common fund cases have the discretion to award attorney’s
 18 fees based on either (1) a percentage-of-recovery basis, in which the court awards fees as a
 19 percentage of the overall fund recovered; or (2) a lodestar basis. *In re Bluetooth Headset Prods.*
 20 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (courts have discretion to choose either method as a
 21 primary basis for calculation, provided they exercise their discretion “so as to achieve a reasonable
 22 result”); *In re Hyundai and Kia Fuel Economy Litigation*, 926 F.3d 539, 570 (9th Cir 2019); *In re*
 23 *Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994) (“either the
 24 percentage or the lodestar method may be appropriate depending on the circumstances”). There is
 25 no presumption in favor of either approach, but the percentage method has been described as the
 26 “dominant” approach in common fund cases. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,

27
 28 ⁸ As discussed in Section D below, that portion of the Seized Assets that will be destroyed should
 first be converted back into ICX before being destroyed to fully undo the harm of Shin’s exploit.

1 1047 (9th Cir. 2002).

2 Courts in the Ninth Circuit typically grant attorney’s fees constituting approximately
 3 between 20% to 35% of the common fund, with 25% being presumptively reasonable. *See Staton*,
 4 327 F.3d at 968; *In re Bluetooth*, 654 F.3d at 942; *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.
 5 482, 491 (E.D. Cal. 2010) (noting “[t]he typical range of acceptable attorneys’ fees . . . is 20% to
 6 33 1/3% of the total settlement value, with 25% considered the benchmark”); *In re Pacific Enters.*
 7 *Sec. Litig.*, 47 F.3d at 379 (33% of fund); *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL
 8 1687829, at *1 (30% of the fund within the “usual range” of fee awards); *In re Activision Sec. Litig.*,
 9 723 F.Supp. 1373, 1375 (N.D. Cal. 1989) (32.8% fee). In determining the value of the recovery,
 10 courts consider both the monetary and non-monetary benefits conferred by counsel’s work. *Id.* at
 11 972–74 (9th Cir. 2003); *Pokorny v. Quixtar, Inc.*, No. C-07-0201-SC, 2013 WL 3790896, at *1
 12 (N.D. Cal. July 18, 2013) (court may properly consider the value of injunctive relief obtained); *In*
 13 *re Netflix Priv. Litig.*, No. 5:11-cv-00379-EJD, 2013 WL 1120801, at *7 (N.D. Cal. Mar. 18, 2013)
 14 (recovery value includes injunctive relief). The benchmark is not rigid – it leaves room for the
 15 consideration the circumstances of the case. *Vizcaino*, 290 F.3d at 1047-50. Relevant factors
 16 include “the results obtained, risk undertaken by counsel, complexity of the issues, length of the
 17 professional relationship, the market rate, and awards in similar cases.” *Morales v. Stevco, Inc.*, No.
 18 CIV-F-09-0704-AWI-JLT, 2013 WL 1222058, at *2 (E.D. Cal. Mar. 25, 2013); *Morris v. Lifescan,*
 19 *Inc.*, 54 F. App’x 663, 664 (9th Cir. 2003) (affirming 33% fee award); *Pac. Enters.*, 47 F.3d at 379
 20 (same).

21 Here, ICON seeks an award equal to the greater of (1) 30% of the Seized Assets upon their
 22 liquidation (which based on recent valuations translates to \$4,827,154); or (2) \$3,471,594,
 23 representing the fees and costs incurred under the lodestar approach. Such an award is appropriate
 24 under the circumstances of the case. First, ICON achieved a complete victory, which included a
 25 judicial determination that the bug-generated ICX are not Shin’s property. ICON also was
 26 responsible for securing the Seized Assets and ensuring that they were not returned to Shin and his
 27 transferees, where they would have been paid to his lawyers and otherwise dissipated. The ultimate
 28

1 remedy in this action also will ensure that the harm caused by Shin and his transferees will be
2 undone to the greatest extent possible.

3 ICON also took on substantial risk in pursuing recovery from Shin, which continues to this
4 day. Shin claimed that ICON's privileged actions in trying to remedy the harm he caused, including
5 alerting the exchanges to his exploit and seeking the return of the bug-generated ICX, constituted
6 a trespass to or conversion of his property entitling him to millions of dollars from ICON. Under
7 the circumstances, most in ICON's position would have either let Shin get away with his exploit or
8 compromised the representative claim against him by allowing Shin to retain some or all of the
9 proceeds to eliminate any potential liability to ICON. But ICON did neither and instead asserted
10 and prevailed on its claims thereby establishing an important precedent that the bug-generated ICX
11 were not his property.

12 Moreover, the risks undertaken by ICON in remedying Shin's actions are ongoing. **Shin's**
13 **counsel disclosed both in the meet and confer process for this motion and his recent**
14 **bankruptcy filing that Shin intends to pursue a malicious prosecution action against ICON**
15 **in Colorado based on ICON's privileged and truthful reporting of Shin's exploit to law**
16 **enforcement.**⁹ (Wanger Decl., ¶ 32.) Although frivolous, Shin's claim will require ICON to incur
17 additional fees and costs to dispose of the claim. Under the circumstances, ICON should receive a
18 substantial reward in this action for the risks it assumed in taking a principled stand on behalf of all
19 ICX holders.

20 The length and breadth of ICON's counsel involvement also supports the requested award.
21 The case spanned more than four years and ICON was required to fight Shin and his many lawyers
22 in multiple venues to ensure that all of the Seized Assets were secured. Finally, such an award is
23 appropriate under the particular circumstances of this case. Because all of the Seized Assets that
24 are not awarded to ICON for its fees will be destroyed, there is no good reason not to award to
25 ICON 30% of the Seized Assets.

26
27
28 ⁹ Shin listed the purported malicious prosecution claim in his bankruptcy schedules as one of his
"assets".

C. **An Award of 30% Is Comparable to the Amount of Fees Awardable Under the Lodestar Method.**

If the court applies the percentage method, it then typically calculates the lodestar as a “cross-check” to assess the reasonableness of the percentage award. *Vizcaino*, 290 F.3d at 1050. Under the lodestar method of calculating an attorney’s fee award, the court multiplies “the number of hours reasonably expended by a reasonable hourly rate.” *Tutor-Saliba Corp. v. City of Hailey*, 452 F.3d 1055, 1064 (9th Cir. 2006). The fee award does not need to be equally justifiable under both the lodestar and the percentage methods, and the court can base its award on the percentage method, even if it exceeds the lodestar amount. *See, e.g., Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376–77 (9th Cir. 1993) (upholding as reasonable a percentage fee award of \$8 million, although lodestar amount came to only \$3 million). As discussed below, a lodestar analysis confirms the reasonableness of the attorney’s fees calculated using the percentage method.

As set forth in more detail in the accompanying Wanger Decl. and the Declaration of Jason Gottlieb (“Gottlieb Decl.”), between August 2020 and November 2024, ICON’s attorneys spent a total of 3,442.50 hours and ICON incurred total fees of just over \$3.1 million.¹⁰ The following table provides a general breakdown of the fees. ICON will incur a minimum additional amount of more than \$25,000 in fees in connection with this motion. (Wanger Decl., ¶ 26.)

Firm	Hours	Range of Rates	Total Fees
Manatt, Phelps & Phillips, LLP	2,679.4	\$450-\$1,400	\$2,657,253.50
Morrison Cohen, LLP	697.5	\$200-\$1,200	\$455,206.50
Holland & Hart	65.6	\$310-\$525	\$27,202.00
Total	3,442.50		\$3,139,662

(*Id.* at ¶¶ 21, 24-26, Ex. M-N; Gottlieb Decl., ¶ 13.)

ICON’s counsel’s rates described above and in the accompanying declarations are

¹⁰ Pursuant to Civil L.R. 54-4(b)(2), ICON will submit the voluminous invoices reflecting its attorneys’ work and contemporaneous time records in this matter upon the Court’s request.

1 reasonable given the prevailing market rate for legal services and other factors specific to this
 2 litigation. “The ‘prevailing market rates in the relevant community’ set the reasonable hourly rate
 3 for purposes of computing the lodestar amount.” *Dowd v. City of L.A.*, 28 F.Supp.3d 1019, 1051
 4 (C.D. Cal. 2014). The court “should be guided by the rate prevailing in the community for similar
 5 work performed by attorneys of comparable skill, experience, and reputation.” *Schwarz v. Sec. of*
 6 *Health & Human Services*, 73 F.3d 895, 908 (9th Cir. 1995). “The relevant community for purposes
 7 of determining the prevailing market rate is generally the forum in which the district court sits.”
 8 *TPCO U.S. Holding, LLC v. Fussell*, No. 23-CV-01324-EMC, 2023 WL 5111986, at *2 (N.D. Cal.
 9 Aug. 9, 2023).

10 ICON’s counsel has significant experience litigating complex cases in this district,
 11 including cryptocurrency cases. ICON retained Manatt as lead counsel and was assisted by the
 12 Morrison Cohen firm and Holland & Hart as local counsel in Colorado. Manatt is a national law
 13 firm with more than 450 lawyers in multiple offices in the United States. As the Wanger Declaration
 14 explains in greater detail, the rates charged by Manatt and ICON’s other counsel are either at or
 15 below the prevailing market rate in the Northern District among comparable firms.¹¹ Federal courts
 16 across California, including this District, previously have found Manatt’s rates reasonable. *See*,
 17 *e.g.*, *Mountz, Inc. v. N.E. Indus. Bolting & Torque, LLC*, 2017 WL 780585, at *3 (N.D. Cal. Jan.
 18 27, 2017); *Love v. Mail on Sun.*, 2007 WL 2709975, at *12 (C.D. Cal. Sept. 7, 2007) *aff’d sub nom.*
 19 *Love v. Assoc. Newspapers, Ltd.*, 611 F.3d 601 (9th Cir. 2010) (awarding \$518,859 in attorney’s
 20 fees and noting that “[t]he experience, reputation, and ability of the Manatt attorneys well-merit the
 21 fees sought”); *Tracy Anderson Mind & Body, LLC, et al. v. Megan Roup, et al.*, 2023 WL 6890744,
 22 at *3 (C.D. Cal. Sep. 11, 2023) (“Having considered Defendants’ attorneys’ experience and the
 23 prevailing rates in the community for comparable work, the Court approves as reasonable
 24 Defendants’ attorneys’ rates.”).

25
 26
 27 ¹¹ The firms are Akin Gump Strauss Hauer & Feld LLP; Arnold & Porter Kaye Scholer LLP;
 28 Fenwick & West LLP; Munger Tolles & Olsen LLP; Orrick, Herrington & Sutcliffe LLP; Pillsbury
 Winthrop Shaw Pittman LLP; and Sheppard Mullin Richter & Hampton LLP.

The number of hours spent by ICON’s counsel also was reasonable. Manatt employed highly strategic, cost-efficient litigation techniques to ensure that it only performed work that was necessary for the case and that the work performed was handled by the most appropriate attorney given their years’ experience. The hours spent also are reasonable given the length of the litigation and the novelty and complexity of the issues presented. This was a four-years long litigation that posed significant challenges and difficulty. At onset, this litigation raised novel theories of property law, as this Court itself acknowledged. (*See, e.g.*, ECF No. 97 at 5 (“Moreover, given the novelty of the issues at hand . . .”); *id.* at 11 (“The availability of another remedy is particularly important in a case like this, which involves novel forms of property and related legal issues.”).) The litigation was made further complex by virtue of the type of property involved—cryptocurrency—and required consulting with, deposing, and issuing reports from various experts to be able to explain to the Court and a jury how cryptocurrency and the blockchain function.

ICON also incurred substantial litigation costs as more fully set out in the Wanger and Gottlieb Declarations, which are summarized below.

Cost Item	Amount
Expert Fees for Dr. Joshua Gans ¹²	\$92,768.75
Expert Fees for Prof. Josh Fairfield ¹³	\$21,375
Expert Fees for Paul Sibenik ¹⁴	\$28,712
Consulting Fees to Parameta ¹⁵	\$46,759.92
Costs for copying, postage, legal research, couriers, travel to Colorado and other miscellaneous items incurred by Manatt,	\$105,025.20

¹² *See* Wanger Decl., ¶ 13, Ex. H.

¹³ *See id.* at ¶ 11, Ex. F.

¹⁴ *See id.* at ¶ 12, Ex. G.

¹⁵ *See* Kim Decl., ¶ 14, Ex. A.

Phelps & Phillips ¹⁶	
Costs for copying, postage, legal research and other miscellaneous items incurred by Morrison Cohen ¹⁷	\$3,991.98
Mediation Fees to JAMS for mediator Stephen Nieman ¹⁸	\$3,300
Mediation Fees to Brown Rudnick for mediator Stephen Palley ¹⁹	\$5,000
Total	\$306,932.85

When these costs are added to the fees described above, including the minimum of \$25,000 incurred on this motion,²⁰ the total fees and costs amount to \$3,471,594 – an amount which reinforces that an award of 30% of the Seized Assets is reasonable.

D. The Foundation Should Be Granted Leave to File a Motion For Reconsideration of the Court’s Order Declining to Require the Receiver to Convey the Seized Assets Into Their Original ICX Form Prior Destruction.

A district court has the inherent power to reconsider and modify its interlocutory orders. *Smith v. Massachusetts*, 543 US 462, 475 (2005). Where a movant can show that the Court “has misunderstood the party or made [an] error of apprehension, reconsideration may be proper.” *Rutter Prac. Guide Fed. Civ. Pro. Before Trial* (Calif. & 9th Cir. Ed.), ¶ 12.158 (TRG 2024) citing *Santamarina v. Sears, Roebuck & Co.*, 466 F.3d 570, 572 (7th Cir. 2006).

In its response to the Court’s request for briefing on remedies (ECF No. 202 at pp. 18-19), the Foundation sought an order that the bug-generated ICX that Shin and his transferees converted to other cryptocurrencies first be converted back into their original ICX form and then destroyed. (See ECF No. 204 at p. 6:1-21.) In its subsequent Order on Remedies, the Court indicated that it

¹⁶ See Wanger Decl., ¶¶ 24 and 26, Exs. L and N.

¹⁷ See Gottlieb Decl., ¶¶ 10-12, Ex. 5.

¹⁸ See Wanger Decl., ¶ 14, Ex. I.

¹⁹ See *id.*

²⁰ Wanger Decl., ¶ 24-26, Exs. K-N.

1 did “not understand why any of the Seized Assets should be converted to ICX prior to destruction.”
 2 (ECF No. 211 at p. 5:4-8.) The Court stated that once the Court awards ICON its attorney’s fees
 3 and costs, “it will be in as close a position as can be accomplished under the circumstances to where
 4 it was before Shin misappropriated the tokens.” (*Id.*) ICON respectfully submits that a judgment
 5 that fails to require that the non-ICX portion of the Seized Assets be converted back into ICX fails
 6 to remedy a significant aspect of the harm Shin caused, specifically the price-reducing sales by
 7 Shin and his transferees of more than 5.3 million bug-generated ICX.

8 ICON brought its counterclaim to redress to the greatest extent possible all harm caused by
 9 Shin’s exploit on behalf of all those holding ICX tokens at the time of the exploit. (*See* First
 10 Amended Counterclaim (ECF No. 100) at pp. 2 and 24-25.) The Main P-Reps were able to freeze
 11 but not destroy approximately 6.7 million of the 13,925,557 bug-generated ICX initially held by
 12 Shin in his ICONex wallets. (Kim Decl. (ECF No. 174) ¶ 64.) However, Shin transferred the
 13 majority of the bug-generated ICX (approximately 7,225,557 bug-generated ICX) to accounts held
 14 by him, his family and his friends at various cryptocurrency exchanges.

15 Specifically, Shin transferred approximately 2,150,000 bug-generated ICX to exchange
 16 accounts held by his friends and family and the balance of approximately 5,075,577 bug-generated
 17 ICX to his own exchange accounts. (*See* Shin’s Response to Interrogatory No. 1 (ECF No. 173-5
 18 at pp. 4-8) and Shin Depo. Tr. (ECF No. 173-1 at pp. 183:3-187:24 and 240:19-243:6).) With the
 19 exception of the 1,890,353.88 bug-generated seized by the FBI and held by the Receiver, Shin and
 20 his transferees sold the balance of the bug-generated ICX totaling approximately 5,335,203 ICX
 21 tokens for other crypto or fiat currency in August 2020. (*See, e.g.*, Shin Brief (ECF No. 203) at p.
 22 3:12-13 (claiming that “98% of the value of the Seized Assets are non-ICX assets” “purchased by
 23 Shin”). It is these sales of approximately 5.3 million bug-generated ICX that ICON respectfully
 24 submits the Court’s Order (ECF No. 211) fails to remedy. The sheer volume of Shin’s and his
 25 transferee’s sales of bug-generated ICX were substantial and unsurprisingly were followed by a
 26 significant decline in the price of ICX. In the two-week period between August 22 and September
 27 5, 2020, when Shin’s exploit became widely known within the ICON community, the price of ICX
 28

1 decreased by almost 40%, from 65 cents to 40 cents. (Kim Decl. (ECF No. 174) ¶¶ 43 and 87 and
2 Exhibit 17 thereto (ECF No. 174-17).)

3 Shin himself has previously acknowledged that it is appropriate for this Court to require the
4 Receiver to use the Seized Assets to acquire ICX to account for harm he caused. (*See* Shin’s Brief
5 (ECF No. 203) at p. 3:15-18.) But Shin contends that the Receiver should only use the Seized
6 Assets to buy 4,801,798 ICX because the Main P-Reps locked up 6.7 million bug-generated ICX
7 in his ICONex wallets and the Receiver is holding another 1,890,353.88 in bug-generated ICX.
8 But the 6.7 million that were locked up in Shin’s ICONex wallets remain part of the total supply of
9 ICX and theoretically could be unlocked. Moreover, because there is no dispute that *all* of the
10 Seized Assets were acquired with bug-generated ICX, they should *all* be converted back to ICX
11 before being destroyed.

12 Conversion of all non-ICX Seized Assets back into ICX prior to destruction also would
13 provide another critically important benefit – the verifiable and failsafe destruction of the Seized
14 Assets. The ICON Network has a known wallet with a “burner address” where ICX tokens can be
15 sent for destruction.²¹ No one has the private keys to that wallet and once an ICX token is sent to
16 the burner address, it becomes permanently inaccessible by anyone. Like transfers to all other
17 wallets, any transfer to the burner address is publicly viewable on the ICON blockchain and thus
18 the world can confirm both the number of ICX tokens sent to the burner address and that they
19 remain at that address.

20 ICON is not aware of similar burner addresses for all of the many other cryptocurrencies
21 held by the Receiver. (Kim Decl., ¶¶ 19-20.) Accordingly, destruction of the non-ICX assets held
22 by the Receiver would likely need to be accomplished through physical destruction of the tokens.
23 But ICON is not aware of any way to ensure a failsafe and verifiable physical destruction of the
24 tokens. Although the tokens may reside on a thumb drive for example, they can be copied. Thus,
25 physical destruction of a storage device on which copies of the tokens reside is neither verifiable
26

27 ²¹ More than 900,000 bug-generated ICX have already been sent to the burner address and
28 destroyed in this manner. (*See* Kim Decl. (ECF No. 174) at ¶¶ 79-84 and Exs. 15 and 16 (ECF Nos.
174-15 and 174-16).)

1 nor failsafe. Because there are millions of dollars' worth of Seized Assets that are subject to
 2 destruction, the Court should require conversion to ICX so that they can be destroyed in a verifiable
 3 and failsafe manner.

4 Shin previously has suggested that conversion of the Seized Assets back into ICX could
 5 present "market manipulation opportunities for large ICX holders." (ECF No. 203 at p. 8:20.) This
 6 claim is rich coming from Shin. When seeking to defend his exploit and his sales of millions of
 7 bug-generated ICX, Shin characterized such sales as harmless non-events with no impact on ICX
 8 holders. (*See e.g.*, ECF No. 184 at p. 20:10-13.) But when faced with a request to undo the effect
 9 of those sales, Shin cries foul. Regardless, nothing about the conversion is market manipulation or
 10 poses any harm to others. Instead, the remedy simply undoes the effect Shin's and his transferees'
 11 sales of 5.3 million bug-generated ICX for other cryptocurrencies.²² Shin's objection to the
 12 conversion is that sales of the Seized Assets for ICX could increase the price and provide a benefit
 13 to large ICX holders. (*See* Brief (ECF No. 203) at pp. 8-9.) But that is precisely why the conversion
 14 is appropriate – it remedies in part Shin's and his transferees' sale of 5.3 million bug-generated
 15 ICX. Admittedly, there may be some current ICX holders who did not hold ICX at the time of
 16 Shin's exploit who could benefit from the conversion but that is not a reasonable basis to forego
 17 ordering the conversion. The Court's remedy should seek to do equity as much as possible even if
 18 as the Court has acknowledged, its remedy in this case must be "imperfect." (Order on Remedies
 19 (ECF No. 211) at p. 5:13-14.) Even if imperfect, requiring the Receiver to convert the proceeds of
 20 Shin's bug-generated ICX back into ICX will achieve a more equitable result for those harmed by
 21 Shin's exploit.

22 **IV. CONCLUSION**

23 The Court should award ICON fees and costs in the greater amount of (1) 30% of the value
 24 on of the cryptocurrency assets it recovered in this matter upon their liquidation by the Receiver;

25 ²² Shin previously objected because of his purported concern that ICON might participate in the
 26 conversion by selling ICX to the Receiver and thereby profit from the remedy. (ECF No. 203 at p.
 27 9:4-7.) Shin fails to explain how such sales at market prices would result in undue profit.
 28 Regardless, ICON does not object to an Order from this Court prohibiting it and its Council persons
 from engaging in any sales of ICX in the period during which the Receiver is converting the Seized
 Assets back into ICX for destruction.

1 or (2) \$3,471,594 representing ICON's fees and costs using the lodestar approach. The Court should
2 also grant ICON leave to seek an order requiring the Receiver, after paying ICON its award of fees
3 and costs, to convert all remaining non-ICX tokens among the Seized Assets back into ICX prior
4 to destroying the Seized Assets.

5
6 Dated: January 22, 2025

MANATT, PHELPS & PHILLIPS, LLP

7 By: /s/ Christopher L. Wanger

8 Christopher L. Wanger

Misa K. Eiritz

9 Jason Gottlieb *Admitted pro hac vice*

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